

SENATE BILL No. 478

DIGEST OF INTRODUCED BILL

Citations Affected: IC 28-9-1; IC 28-9-6.

Synopsis: Availability of deposited funds. Requires the department of financial institutions to regulate the period in which depository financial institutions must make funds available to a depositor. Voids insufficient funds charges and overdraft charges that are incurred because the depository financial institution fails to make deposited funds available as required by law.

Effective: Upon passage; July 1, 2007.

Paul

January 11, 2007, read first time and referred to Committee on Insurance and Financial Institutions.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 478

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 28-9-1-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2007]: Sec. 1. **The provisions of** this article,
3 ~~does except IC 28-9-6, do~~ not apply to income withholding under
4 IC 31-16-15.

5 SECTION 2. IC 28-9-1-3.5 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2007]: **Sec. 3.5. "Check" has the meaning set forth in 12 U.S.C.**
8 **4001 et seq.**

9 SECTION 3. IC 28-9-1-3.7 IS ADDED TO THE INDIANA CODE
10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2007]: **Sec. 3.7. "Department" refers to the department of**
12 **financial institutions.**

13 SECTION 4. IC 28-9-6 IS ADDED TO THE INDIANA CODE AS
14 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2007]:

16 **Chapter 6. Availability of Funds; Checks Originating From**
17 **Another Depository Financial Institution**



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1 **Sec. 1. This chapter applies to the extent permitted by federal**
 2 **law. Any provision of this chapter that is not preempted by federal**
 3 **law is severable from any other provision that is preempted by**
 4 **federal law.**

5 **Sec. 2. The department shall regulate depository financial**
 6 **institutions to insure that the difference between the time that**
 7 **funds are deposited by a deposit account at a depository financial**
 8 **institution by check drawn on another depository financial**
 9 **institution and the time that the funds are available for withdrawal**
 10 **from the deposit account does not exceed the period that a**
 11 **reasonable person that is generally familiar with modern**
 12 **computerized check clearing system practices would expect. In**
 13 **applying this section, an agreement between the depository**
 14 **financial institution and persons having a deposit account with the**
 15 **depository financial institution shall not be considered.**

16 **Sec. 3. The maximum period that the department may permit**
 17 **under section 2 of this chapter is the maximum period permitted**
 18 **under a schedule established under the Expedited Funds**
 19 **Availability Act (12 U.S.C. 4001 et seq.) or a regulations or rulings**
 20 **adopted under the Expedited Funds Availability Act (12 U.S.C.**
 21 **4001 et seq.) for the particular type of transaction.**

22 **Sec. 4. The department shall collect from depository financial**
 23 **institutions in Indiana sufficient information for the department to**
 24 **determine whether the period achievable under the current check**
 25 **clearing system for depository financial institutions in Indiana or**
 26 **the particular class of depository financial institutions in Indiana**
 27 **to reasonably expect to learn of the nonpayment of most items for**
 28 **each category of checks is regularly shorter than the period**
 29 **described in section 3 of this chapter for one (1) or more**
 30 **transaction classes. The department may post a comparison**
 31 **between the holding periods described in section 3 of this chapter**
 32 **and the average transaction times for a particular depository**
 33 **financial institution, a class of similar depository financial**
 34 **institutions, or all depository financial institutions in Indiana on**
 35 **the Internet for viewing by the public.**

36 **Sec. 5. To the extent permitted by federal law, the department**
 37 **may establish a shorter period than the period described in section**
 38 **3 of this chapter for any class of transaction involving all**
 39 **depository financial institutions in Indiana or a particular class of**
 40 **depository financial institutions in Indiana if the department**
 41 **determines that the period achievable under the improved check**
 42 **clearing system for depository financial institutions in Indiana or**

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the particular class of depository financial institutions in Indiana to reasonably expect to learn of the nonpayment of most items for each category of checks is regularly shorter than the period described in section 3 of this chapter for one (1) or transaction classes.

Sec. 6. Notwithstanding any agreement between a depository financial institution and another person, a charge or fee imposed by a depository financial institution after June 30, 2007, on a person related to insufficient funds or overdraft protection is void to the extent that:

- (1) a person has deposited funds by check in the deposit account against which the charge or fee was imposed;
- (2) there would have been sufficient funds in the deposit account to cover any withdrawals if the depository financial institution had added the deposited funds to the amount that was available for withdrawal from the deposit account; and
- (3) the failure of the depository financial institution to make the deposited amount available for withdrawal violated the availability standards required under this chapter.

Sec. 7. The department shall enforce this chapter.

SECTION 5. [EFFECTIVE UPON PASSAGE] The department of financial institutions may adopt temporary rules in the manner provided for the adoption of emergency rules under IC 4-22-2-37.1 to implement IC 28-9-6. A temporary rule adopted under this SECTION expires on the earliest of the following:

- (1) The date specified in the temporary rule.
- (2) The date that another temporary rule adopted under this SECTION or a rule adopted under IC 4-22-2 amends, supersedes, or repeals the temporary rule.
- (3) July 1, 2008.

SECTION 6. An emergency is declared for this act.

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